REMARKS

Claims 1-26 are pending in the application. Claims 7-13, 19, 25 and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Paradine et al. (U.S. Patent No. 6,049,565) in view of Sato et al. (U.S. Patent No. 6,078,882). Claims 1-6, 14-18 and 20-24 are allowable. Of the Claims, Claims 1, 7, 14, 19, 20, 21, 23, and 25 are independent claims. The Applicant respectfully traverses the rejections.

Regarding Allowable Subject Matter

Applicants thank the Examiner for the allowance of Claims 1-6, 14-18 and 20-24. Claims 1, 14, 20, 21 and 23 have been amended to clarify that the data packet transmitted by a remove header routine in a system may not be the same data packet received by a remove header routine in the same system. Support for the amendment is the Applicant's specification as originally filed. (*See* Fig. 2, 202, 206.) Acceptance of Claims 1-6, 14-18 and 20-24 as amended are respectfully requested.

Regarding Rejections under 35 U.S.C. 103(a)

Claims 7-13, 19, 25 and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Paradine et al. (U.S. Patent No. 6,049,565) in view of Sato et al. (U.S. Patent No. 6,078,882).

Cited prior art, Paradine does not teach or suggest at least the Applicant's claimed "means for detecting the state of the non speech identifier in the header of the received data packet to determine if non speech audio is stored in the payload of the received data packet, whereupon the jitter buffer latency can be modified." Paradine does not even discuss a header in a data packet. Paradine merely indicates that samples are incorporated into a suitable packet. (*See* Col. 6, lines 5-6.) Furthermore, in the system discussed by Paradine, only speech data is transmitted in order to reduce data network traffic. As shown in Fig. 5, at step 510, if there is voice activity detected in the sample, the sample is stored in memory and at step 525, the samples in memory are transmitted. Comfort noise must be regenerated at the receiver for the time period in which no speech data is received. Thus, Paradine merely describes a system which does not transmit audio while there is no voice activity and instead regenerates comfort

noise in the receiver while no audio is received. As discussed in the Applicant's specification, the generation of comfort noise by the receiver instead of transmitting non-speech data reduces the quality of the real-time audio. In the Applicant's claimed invention, both non-speech data and speech data are transmitted improving the quality of the real-time audio. By identifying whether non-speech data is stored in the payload of a data packet, and transmitting both speech and non-speech data, the quality of the received audio is improved without losing speech data because the jitter buffer latency can be modified while non-speech data is stored in the payload of a received data packet.

Sato's discussion of an identifier to indicate whether the payload is a speech spurt or extracted speech during a hangover period, for purposes of deciding whether to add noise in a receiver does not teach or suggest the Applicant's claimed "non-speech identifier". Furthermore, Sato does not even suggest storing non-speech audio in the payload of the data packet. Instead, Sato's receiver generates the non-transmitted background noise upon detecting non-receipt of data packets and inserts the generated noise into a pause. (See Fig. 1 (noise interpolator (9)); Fig. 2; Fig. 3; Fig. 5; Col. 4, lines 50-57; Col. 5, lines 16-17; Col. 5, line 67 - Col. 6, line 10; and Col. 6, lines 44-51.)

None of the cited art singly or in combination teaches or suggests "means for detecting the state of the non speech identifier in the header of the received data packet to determine if non speech audio is stored in the payload of the received data packet, whereupon the jitter buffer latency can be modified" as claimed by the Applicant in independent Claim 7. There is no teaching or suggestion in either Paradine or Sato for storing a non-speech identifier with the audio in the data packet. Referring to Figs. 2 and 3 of Sato, voice packets are only transmitted during speech spurts and hangover periods and include voice data. No voice packet is sent during a pause. As shown in Fig. 4 of Sato, a third level generator 904 in the noise interpolator 9 in the receiver 3 shown in Fig. 1 generates white noise to insert into the pauses. (*See* Col.5, line 57 – col. 6, line 4.) Referring to Figs. 4 and 5 of Paradine, only samples (410) in which voice activity is detected (at step 510) are stored in memory (at step 520) and transmitted (at step 525). Therefore, both Paradine and Sato only discuss transmitting audio that includes voice activity. Thus, there is no suggestion to add a non-speech identifier because non-speech audio is never transmitted. There is no suggestion to combine Paradine and Sato, and even if combined they

fail to teach the claimed "means for detecting the state of the non-speech identifier in the header of a received data packet" which is used to determine "if non-speech audio is stored in the payload of the received data packet." The combination merely describes a system in which only speech audio is transmitted and comfort noise is generated by the receiver for periods in which no audio is being received.

The above quoted claim language is in base Claim 7. Claims 8-13 are dependent on Claim 7 and thus include this limitation over the prior art. Independent Claims 19 and 25 recite a like distinction in terms of a computer program product and thus similarly patentably distinguishes over the prior art. Claim 26 is dependent on Claim 25 and thus includes this limitation over the prior art.

Accordingly, the present invention as now claimed is believed to be patentably non-obvious over the cited art. In view of the foregoing, removal of the rejections under 35 U.S.C. § 103(a) and acceptance of Claims 7-13, 19, 25 and 26 are respectfully requested.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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